

Summary Assessment of Provincial Legislative Framework MANITOBA¹

Overall, the strength of Manitoba’s legislative framework for protecting farmland is **moderate with important weak elements**. The strongest aspect of the framework is its stability (very good), with a moderate rating for integrating the public interest in protecting farmland between the province and local governments. The principles of minimise uncertainty and accommodate flexibility received a weak rating. A profile of the provincial legislative framework is provided at the end.

Strength of Provincial Legislative Framework: Summary Assessment

	Maximise stability	Integrate across jurisdictions	Minimise uncertainty	Accommodate flexibility
Manitoba	****	***	**	**

* = Very weak; ***** = Very strong

Maximise stability

With regard for maximising stability, the strength of the provincial legislative framework rests upon *The Planning Act* and, most importantly, the regulation pursuant to the Act, the Provincial Planning Regulation. The Act establishes the legal obligation for local (municipal) governments and planning districts to prepare comprehensive land use plans for their jurisdiction. Under s42(2), a development plan must include a livestock operation policy that guides zoning bylaws.

The Provincial Planning Regulation enacts the Provincial Land Use Policies (PLUPs), which are explicit statements of public interest to ensure that a number of planning and development practices are applied consistently to all development plans, including farmland protection. Policy Area 3 is for agriculture. Part 5 enacts introductory provisions for livestock operations, which cover total animal units and siting standards and setback requirements.

The PLUP Policy Area 3: Agriculture contains strong, clear language that expresses the provincial interest to protect farmland, as evident in the following statements:

- Prime agricultural land and viable lower class land can be considered non-renewable, as once taken out of production, they are seldom returned to agriculture.
- Planning for the agricultural use of these lands and protecting them from conversion to non-farm use is vital to the future of Manitoba's agricultural sector.
- Agricultural lands face increasing pressure from residential and recreational development, but also from competing resource-related uses. The resulting fragmentation of the land base can make it difficult for producers to farm by increasing the potential for conflict between farm and non-farm uses and inflating the cost of farmland.

¹ From: Connell, David. J. (2016). “Agricultural Land Use Planning in Canada: Case Study of Brandon and Area Planning District, Manitoba.” Prince George, BC: University of British Columbia.

- The Province encourages local authorities to support the farming community by setting policies that reduce the fragmentation of the agricultural land base and protect the viability of agricultural operations.

In addition to these PLUP statements, there are other considerations for protecting farmland in several other policy areas. For example, under Policy Area 1: General Development, a planning policy is to direct rural residential, cottage, and non-resource-related uses to areas where agriculture is not dominant and away from prime agricultural land, viable lower class land, and existing agricultural operations whenever possible. Policy Area 2: Settlement Areas explicitly recognises that the cumulative effects of low density and scattered residential development in rural areas can create conflict with agricultural operations.

In spite of strong language and policies in PLUP Policy Area 3: Agriculture, the legislative framework for protecting farmland in Manitoba would be stronger if agricultural land was listed explicitly as a type of land to be protected in *The Planning Act*. In section 4(3)(b), the Act lists types of lands and resources to be protected and enhanced, including water sources, sensitive lands, renewable resources, and areas of natural or historic significance; the transportation system and other infrastructure, and mineral development. Agricultural land is not identified here as needing to be protected or enhanced.

Integrate public priorities across jurisdictions

Specific statements of *The Planning Act* establish the level of required integration across jurisdictions, which is moderate. As per s47(1), all development plans must be submitted to the minister for approval. This approval process is the only legislative mechanism that ensures local governments adhere to the PLUPs. On this basis, and per s62(1), provincial land use policies no longer apply to a planning district or municipality that has adopted a development plan by-law. The PLUPs apply to all future amendments to and the re-enactment of a development plan by-law. The wording for required integration in *The Planning Act* (s41) is that a development plan “must be generally consistent” with the PLUPs, which could be stronger.

The province typically recommends that development plans should not refer to provincial legislation or regulations (outside of *The Planning Act* or Provincial Planning Regulation) as these are provincial requirements which are beyond the authority of the development plan.

The Interdepartmental Planning Board (IPB) consisting of officials from government departments and agencies is involved in matters related to land use and development. With input from representatives of the IPB departments, the Board reviews and provides input on all development plans and amendments using the PLUPS for guidance.

The province recently established Technical Advisory Committees for land use planning that bring together provincial departments, municipalities, and planning consultants during and prior to the drafting of the development plan in order to improve communication and collaboration regarding respective land use interests and priorities.

Minimise uncertainty

Several elements of the legislative framework introduce uncertainty and weaken protection for farmland in Manitoba. Although the importance of protecting farmland is evident in the framework, there is no legislation to reserve lands for agricultural use, i.e., there is no agricultural land reserve, as there is in British Columbia and Québec.

In the absence of a land reserve, several statements in the legislative framework are more relevant in relation to uncertainty. Among these, there is also no provincial-level governance

mechanism that can manage a flexible planning process. Instead, the authority to approve development plans rests with the minister, which exposes land use plans to political influences and changes in political interests. This aspect of uncertainty is further exposed by weaker language. One example is the legal requirement for integrating the provincial land use interests in local development plans. Whereas other jurisdictions often use the term, “must be consistent with,” the term used in *The Planning Act* is “must be generally consistent,” wherein,

‘Generally consistent’ means that development plan by-laws will embody the principles of sound land use planning as expressed in the PLUPs, and the goals, plans and policies contained in development plan by-laws will reflect the spirit and intent of the PLUPs.

This is important because once a development plan by-law is adopted, the PLUPs no longer apply to the planning area until a plan is being amended or reviewed. As such, a development plan by-law is ultimately jointly approved and endorsed by both the planning authority and the Province.

Furthermore, from a legal perspective, the term “spirit and intent” can be problematic because it introduces uncertainty as to whether one should rely on broad concepts versus the text of laws.

The policy related to urban expansion provides an example of how conditions used in the PLUPs introduce uncertainty. Whereas Policy Area 2: Settlement Areas (s2.2.6) states that the expansion of an urban centre must be directed away from prime agricultural land and agricultural operations, it also states, “where factors such as servicing and land availability make urban expansion into these areas the best option, urban expansion may take precedence over other uses.” In effect, this policy gives priority to urban development over protecting farmland.

Accommodate flexibility

The provincial legislative framework, especially the PLUPs, is designed specifically to accommodate flexibility. The legal requirements of a development plan are minimal and general. Under s42(1)a,b, these requirements include plans and policies that respect the local government’s “purposes and its physical, social, environmental and economic objectives.” Land use and development are to be directed through maps and statements of objectives.

The Provincial Planning Regulation re-inforces the intent to allow local governments to determine their public priorities for land uses. As stated under Scope and Application (see the appendix for the full text),

The PLUPs by their nature are general and cannot account for all local situations, special circumstances and exceptions. In recognition of this variability it is intended that they be applied to reflect local needs, so long as provincial interests are not undermined. The PLUPs will be strictly applied in areas of the Province experiencing more growth or change, such as the capital region, and may be applied with more flexibility in areas experiencing limited growth or change, and where there is little potential for land use conflict.

This statement recognises that different conditions exist in which development plans are made and, in particular, that a greater level of flexibility is permitted only in areas where the potential for land use conflicts is lowest.

There is no commission that is responsible for agricultural land use planning in Manitoba. Instead, the minister has authority to approve development plan; thereafter, the PLUPs are presumed to be enacted through the by-law. In this context, the absence of a provincial-level governance structure for agricultural land use planning can undermine the flexible elements of the framework, such that the balance favours local priorities over provincial interests.

Summary Assessment of Provincial Legislative Framework: Manitoba

Legislative Framework for Manitoba

	POLICY	LEGISLATION	GOVERNANCE
PROVINCIAL	Planning for Agriculture	<i>The Planning Act</i> Provincial Planning Regulation <i>Farm Practices Protection Act</i> <i>Family Farm Protection Act</i> <i>Farm Lands Ownership Act</i> Livestock Manure & Mortalities Management Regulation	Manitoba Farm Industry Board Interdepartmental Planning Board Technical Advisory Committees
REQUIRED INTEGRATION	<i>Planning Act</i> s47(1) ...the board or council must submit the by-law to the minister for approval. <i>Planning Act</i> s41 A development plan must be generally consistent with provincial land use policies. <i>Planning Act</i> s62(1) ... provincial land use policies no longer apply to a planning district or municipality that has adopted a development plan by-law. PLUP 2 Development plans must be prepared in accordance with the requirements of Part 4 of the Schedule.		
REGIONAL		District Plan	District Board
LOCAL		<i>Development Plan</i> Zoning Bylaw	

Acts (provincial laws), bylaws (local government laws, e.g., official municipal plan) [italicised]

Enforceable policy, regulations pursuant to acts [bold]

Aspirational policy at all levels [plain text]